

Pratt, Greg

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE ADAMS GOLF, INC. Consolidated
C.A. No. 99-371 KAJ
SECURITIES LITIGATION Class Action
Jury Trial Demanded

APRIL 27, 2006
9:00 O'CLOCK A.M.

The Deposition of GREG PRATT, taken
before Ernest Kuemmel, CSR(A), Examiner, pursuant
to Rules 203, 728, 204(1) of the Court of Queen's
Bench of Alberta at the offices of Michael C.
Dunkley, Calgary, Alberta, on the 27th day of
April, A.D. 2006.

2
APPEARANCES

FOR THE PLAINTIFFS:

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and

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(With the exception of the underwriters)

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OFFICIAL COURT REPORTER:

Kim L. Morosse, CSR(A) RPR

2

3

INDEX

GREG PRATT, sworn

Examined by Ms. Fox	4
Examined by Ms. Reed	58
Re-examined by Ms. Fox	152
Re-examined by Ms. Reed	165
Further examined by Ms. Fox	169

Reporter's certificate	171
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Listing of exhibits	172
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4

GREG PRATT, sworn, examined by Ms. Fox:

- 2 Q. Can you state your name for the record?
- 3 A. My name is Greg Pratt.
- 4 Q. And where do you live?
- 5 A. I live in Calgary, Alberta, Canada.
- 6 Q. When did you start with Mackenzie?
- 7 A. In 1994.
- 8 Q. What was Mackenzie?
- 9 A. WDC Mackenzie Distributors was a golf
- 10 distributor based out of Calgary.
- 11 Q. By the spring of 1998, what was your
- 12 position with Mackenzie?
- 13 A. I was the national sales manager.
- 14 Q. What were your duties as national sales
- 15 manager?
- 16 A. My duties were overseeing the sales
- 17 force and purchasing of some of the product within
- 18 the wholesale division.
- 19 Q. What was Mackenzie's relationship with
- 20 Adams Golf in 1998?
- 21 A. We were the exclusive Canadian
- 22 distributor of Adams product within the Canadian
- 23 market.
- 24 Q. What exactly did that mean?
- 25 A. That meant that we were the sole holder

GREG PRATT - April 27, 26

13

1 started to be discounted in the market.
 2 The fear that everybody felt in
 3 regards to the Adams product, was that our product
 4 was first generation. It was in the market now and
 5 it was trending up. So the impact was huge in the
 6 sense that this could hurt everybody's business.

7 Q. When you say "it was in the market now,
 8 was trending up," can you describe that more fully?
 9 A. From my experience as a retail buyer for
 10 a national chain years prior, it is very rare that
 11 you get an item that trends as hot as the Adams
 12 Tight Lies was trending, and that's -- that was the
 13 situation we found ourselves in, in the sense that
 14 this product was selling so fast, it was hard for
 15 us and our customers to stay on top of because it
 16 was very popular.

17 Q. Can you give any examples of things that
 18 happened at trade shows? When you made your
 19 visits, any examples of showing that Adams Golf was
 20 trending high?

21 A. In regards to the popularity?

22 Q. Yes.

23 A. Typically our trade shows in Canada for
 24 the Canadian Professional Golf Association, we do
 25 our booking shows the fall prior to delivery, and

14

1 our shows in October, November of '97, we literally
 2 had customers running into our booth saying,
 3 "There's the club, I have to have it."

4 It was something that I had never
 5 experienced before, and it was -- people were
 6 buying product like I had never seen the quantities
 7 before.

8 Q. On the fifth paragraph, what was your
 9 wholesale price for graphite Tight Lies? In other
 10 words, what was the price if you bought them from
 11 Adams Golf?

12 A. The price that we bought them from Adams
 13 Golf? That's two different things. Our wholesale
 14 price that we sold to the --

15 Q. All right.

16 A. The wholesale price that we sold to our
 17 customers in Canada was \$235 Canadian for a
 18 graphite Tight Lies club.

19 Q. And what was the retail price that your
 20 customers would sell it to golfers?

21 A. The accepted retail in the market was
 22 between \$299 and \$349 Canadian.

23 Q. So how much did each retailer Macon a
 24 club that had sold?

25 A. At that time of those retail of 299 to

15

1 349, those were the accepted prices within the golf
 2 industry for hard goods, or clubs in this case.

3 Q. And what happened when Costco came in?
 4 What were they selling it at?

5 A. They were selling the product at
 6 \$249.99, so that was obviously of grave concern to
 7 our customers and ourselves, that that price that
 8 they were selling it at was just above our
 9 wholesale.

10 Q. So that the retailer margins were much
 11 decreased once Costco came in?

12 A. The retail margins were in jeopardy, for
 13 sure.

14 Q. And were your customers talking to you
 15 about that?

16 A. Yes.

17 Q. That was their major concern?

18 A. They were quite adamant that it was of
 19 grave concern to them.

20 Q. On the second page of this thing, what
 21 do you mean by "The perception in the market"?

22 Right on the top there: "Damage to the perception
 23 in the market."

24 A. The Canadian golf market is quite small,
 25 in the sense that word travels fast, and this being

16

1 a new product that was trending up very sharply,
 2 the perception in the market was very sensitive in
 3 the sense that this was -- there could be damage
 4 done very quickly to the perception of the Adams
 5 product, the Adams company and, of course, to us,
 6 Mackenzie Distributors. So that's why there was
 7 concern that people wanted this to be addressed
 8 right away, as other manufacturers had done.

9 Q. What were your -- were your customers
 10 actually comparing you to other manufacturers when
 11 they spoke with you?

12 A. All the time because, they wanted to
 13 know that we would address the situation, and that
 14 was their concern, is that would we do what the
 15 other manufacturers had done because they wanted to
 16 have this fixed because they were getting
 17 complaints from their customers.

18 Q. Did you make any suggestions in this
 19 letter of what you hoped Adams would do to help you
 20 in the situation?

21 A. We found that when this became a problem
 22 with products being in Costco, that we became
 23 students of gray marketing because it was the first
 24 time that we had heard about it.

25 So what we did is we talked to

GREG PRATT - April 27, 26

73

1 the page "...has not received much
2 product to date, this pricing has
3 done some short-term damage to the
4 perception in the market."

5 Is it an accurate statement that at
6 that time, Costco had not received much product to
7 date?

8 **A. They hadn't received much product to
9 date, but the damage was being done.**

10 Q. Yes, and so in your statement, you say
11 that they had done some short-term damage. Is that
12 an accurate statement as well?

13 **A. Yes.**

14 Q. In the next paragraph, the second
15 sentence, you say:

16 "While they all agree that this is
17 the hottest club in the market,
18 they are uncomfortable with
19 Costco's retail being only \$15 more
20 than their wholesale."

21 So let's take that in pieces. So
22 did everyone agree that Adams Golf was the hottest
23 club in the market at the time?

24 **A. For the most part, yes. The majority of
our accounts agreed that that was the hottest club**

74

1 **in the golf market.**

2 Q. Then later on in this paragraph, you
3 mention -- the second-to-last sentence, you say:
4 "We have asked them to give us 60 days."

5 **A. Yes.**

6 Q. So you'd asked the retailers, who were
7 upset about this problem, give us 60 days and we
8 will figure out what we're going to do?

9 **A. Yes.**

10 Q. And the date of this is April 13th,
11 1998?

12 **A. Yes.**

13 Q. So by June 13th, 1998, you told the
14 retailers, we will have figured out what we're
15 going to do with this?

16 **A. That was the hope on our part and that's
the action we took on our own, is to basically buy
ourselves some time because the next 60 days took
us through a lot of the busy golf season, so that
was our thinking, that hopefully they would stand
by us.**

17 Q. Second to the last paragraph, you're
addressing Chris Beebe here, and you say:

18 "Your quick action on the order for
King Par in Flint, Michigan stopped

75

1 an order of 1,500 clubs going to
2 the one store account."

3 Do you recall that being the case?

4 **A. That he stopped that order?**

5 Q. Yes.

6 **A. Yes, I do.**

7 Q. And what was your recollection of that
8 incident, or that event?

9 **A. I remember him calling us to say he had,**
10 **as he put it, grabbed the order off the fax. And**
11 **we were quite delighted that hopefully this was the**
12 **beginning of the end.**

13 Q. Did you have any way of knowing whether
14 it was going to be the beginning of the end?

15 **A. No.**

16 Q. King Par in Flint, Michigan, based on
17 Exhibit 18 that I have shown you earlier, was a
18 source of gray marketing at Callaway and Taylor
19 Made. Is that accurate?

20 **A. We believed it to be.**

21 Q. So there was a genuine hope that if you
22 had found the source of the gray market here, that
23 the gray marketing would stop?

24 **A. That was our hope.**

25 Q. And then one other thing I want to go

76

1 through with this letter, in that same paragraph on
2 King Par, it says:

3 "Ping was able to control this
4 problem when they started to serial
5 code their clubs."

6 Do you remember that to be the
7 case?

8 **A. In regards to Ping?**

9 Q. Yes.

10 **A. Our perception of Ping was that they --**
11 **because of the serial coding of the clubs, in our**
12 **research in talking with them, that's the reason**
13 **they felt as to why they didn't have the gray**
14 **market problem.**

15 Q. So if a company serial coded their
16 clubs, then they could anticipate, based on the
17 history with Ping, that could stop the gray
18 marketing?

19 **A. It could if your system was good in**
20 **recording and tracking the numbers. That was the**
21 **key. And easier said than done when you're**
22 **manufacturing the number of clubs that they're**
23 **manufacturing.**

24 Q. Let's turn to Exhibit 8 that we've gone
25 over earlier. It's Bate stamped MCK84, and it's

GREG PRATT - April 27, 26

81

place in case this occurs again, as several other major companies, Callaway, Ping and Taylor Made, have all reacted to similar problems by buying back the Costco stock or helping pros match the Costco pricing."

Do you have any recollections of discussions about having a plan in place?

A. Well, that was the thought all along in the sense that from talking to other manufacturers, that this could have been again -- happen again with more orders. So there was some discussion about what should we do.

Q. And so the two options that, at least, were discussed here, were you could either buy back the Costco stock or help the pros match the Costco pricing?

A. Yes.

Q. Let me ask you about Costco. We talked about that Costco sells things cheaper than the golf pros were selling them?

A. Yes.

Q. So if Costco is selling things cheaper than the golf pros are selling them, do they sell

82

faster?

A. Typically a retail, if somebody is selling a popular product at a lower retail, they will sell faster.

Q. So do you think Costco had a quick or a slow sellthrough of Adams Golf clubs?

MS. FOX: If you know.

MS. REED: Absolutely.

A. Best of my recollection, at first it wasn't that fast because it took awhile for word to get around, and as they got more product into all the stores, it started to sell faster.

Q. MS. REED: But as of your meeting with Chris Beebe at the end of April, the feeling was that, at that time, most Costcos were out of the product?

A. That was the hope.

Q. Had you been tracking the product at Costco?

A. Yes.

Q. And at that time, were Costcos filled with Adams Golf clubs or were they mostly out of Adams Golf clubs?

A. Initially the Costco stock was not that high, but it increased significantly as obviously

83

the gray marketers got their hands on more product.

Q. Do you recall when it increased significantly?

A. This thing heated up pretty quick from this point on, through the busy part of the golf season. So from between then, and the peak of our golf season is Father's Day for retail sales, so it increased significantly from that time.

Q. So between the end of April, so May to Father's Day, which is mid June, the Costco inventory increased?

A. Yes.

Q. Tell me a little bit, since I'm not a golfer, about the golfing season. When is the sort of hot golf time, high sales, and when is the slow golf time or slow golf sales?

A. It's different in every country, and because we have our four different seasons in Canada, our season -- typically the retail stores and the pro shops at the golf courses will receive their spring shipments in anywhere from the end of February to the middle of April. And the sales will be -- will grow up to Father's Day, and quite often Father's Day can be significant.

Q. And then what happens after Father's

84

Day?

A. The sales are still strong for the golf season. It spikes, if you will, at Father's Day, but sales are still strong through the golf season, and especially strong for trending products.

Q. What is the golf season?

A. Our golf season typically in Canada is about the middle to -- actually the third week in April to end of September, but at retail, with a lot of our golfers travelling to the United States, the retail is strong throughout the year.

Q. So tell me about retail versus wholesale.

A. It's -- sorry, when I call it retail, I mean like the non-courses, or cement shops, as we used to call them. So there's your pro shops, which are your green grass, and then there is your retail, which is like your cement shops, which are not on golf courses. So when I refer to retail, I really just mean the non-course shops.

Q. What are some examples of those?

A. It would be your Nevada Bob's and a lot of independent stores throughout the country.

There's Pro Golf.

Q. So retail would even be strong through

93

1 that with the gray market, you don't know if there
2 will be a next shipment?

3 **A. That's right.**

4 **Q. That you hoped that it would be the end**
5 of it?

6 **A. Yes.**

7 **Q. So the only option for stopping a flow**
8 of product would be to identify who the gray
9 marketers were?

10 **A. Yes.**

11 **Q. And cutting them off?**

12 **A. Yes.**

13 **Q. And you were aware that Adams Golf cut**
14 off King Par, for a 1,500 club order?

15 **A. Actually, we were aware that they**
16 stopped that order. We don't know that they ever
17 stopped doing business with King Par. We just know
18 for that specific order, that that was stopped.

19 **Q. Were you aware that they also stopped an**
20 order to Manatee Golf?

21 **A. The name sounds familiar, so yes, that**
22 could have been. Chris regularly would check for
23 other orders, and that's why I think they put that
24 policy in, where the orders had to be signed off
25 over a certain quantity. So that's -- the name

94

1 sounds familiar.

2 **Q. So you were aware that Adams Golf had**
3 implemented a policy where, for large orders, they
4 had to be signed off on?

5 **A. Yes.**

6 **Q. And you were aware, at least of one**
7 instance with King Par, of stopping a large order?

8 **A. Yes.**

9 **Q. And at some point, were you aware that**
10 Adams Golf was going to serialize their clubs?

11 **A. There was discussion about that. We**
12 know that they did later serialize their clubs, so
13 there was the discussion.

14 **Q. Do you know when Adams Golf decided to**
15 serialize their clubs?

16 **A. I don't recall exactly. I believe it**
17 was in 1999.

18 **Q. We'll won't go over this. By spring of**
19 1999, your people were writing back with serial
20 numbers of clubs from the Costco stores?

21 **A. Yes.**

22 **Q. So are you aware of how long it takes to**
23 implement a serialization program at a golf
24 manufacturer?

25 **A. No.**

95

1 **Q. Would it seems logical to you that it**
2 would take a little bit of time to actually
3 serialize the clubs and get that process in order?

4 **A. Yes.**

5 **Q. So the only way you could stop the flow**
6 of product that is a big concern is to either
7 identify the gray marketers and stop shipping to
8 them, or serialize your clubs in a way that you can
9 monitor them?

10 **A. With a proper system of serial coding**
11 that you could follow up on the product. The
12 concern to us by this time is that it had been
13 going on for months, and a lot of the damage had
14 been done.

15 **Q. So by the end of June, I'm trying to**
16 summarize where Adams Golf was at in addressing
17 this problem. My understand being is that by the
18 end of June, they had implemented a price matching
19 strategy; Is that right?

20 **A. Yes.**

21 **Q. And by the end of June, they were**
22 monitoring large orders; Is that right?

23 **A. Yes.**

24 **Q. And by the end of June, they had**
25 actually stopped a 1,500 club order to King Par?

96

1 **A. Yes.**

2 **Q. Let's turn to Exhibit 11, which is the**
3 June 10, 1998 memo from WDC Mackenzie to the
4 retailers and golf pros, the WDC customers.

5 The end of the first paragraph in
6 this June memo, which is Bate stamped MCK1061.
7 That very last sentence, it says:

8 "With your support year to date,
9 even with the headache of the
10 Costco situation, you have put the
11 Adams Tight Lies family of clubs on
12 an incredible sales pace in
13 Canada."

14 Is that an accurate statement?

15 **A. Yes.**

16 **Q. So at the time in June, the pace of the**
17 Adams clubs was going strong?

18 **A. Yes.**

19 MS. FOX: Can I clarify
20 something? I think our Exhibit is 00075. It
21 doesn't matter, but I just wanted to . . .

22 MS. REED: For the record, yes.
23 I'm using a different copy. It's Bate stamped
24 MCK75. Very good, thank you.

25 Q. MS. REED: Now, in this first